

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY SECOND DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 3989 of 1999

Between:

Chairman & Managing Director Andhra Bank
Head Office,Saifabad Hyderabad.

..... PETITIONER

AND

- 1 The Presiding Officer Labour Court-I, A.P Hyderabad.
- 2 K.S.V.Ramakrishna C/o.K.Ramaswamy, R/o.H.No.25-11-105,Srinivasa

Thota 5th Lane,Guntur, Guntur Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or a writ more particularly one in the nature of Writ of Certiorari after calling for the records from the first respondent and quash the Award passed in I.D.No.144/95 dated 20-07-98 and pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Counsel for the Petitioner:MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1 : G.P. for Labour.

Counsel for the Respondent No.2: MR.G.RAVI MOHAN / Mr V.Viswanatham

The Court made the following:

ORDER:

This writ petition is filed by the Chairman & Managing Director, Andhra Bank, Head Office, Saifabad, Hyderabad,(management), being aggrieved by the Award dated 20-07-1998 passed by the 1st respondent-Labour Court-I, Andhra Pradesh, Hyderabad in I.D.No. 144 of 1995, wherein, the petition filed under Section 2-A(2) of the Industrial Disputes Act by the 2nd respondent herein was allowed and the 2nd respondent was granted relief of reinstatement with continuity of service, full back wages and attendant benefits.

According to the writ petitioner, the 2nd respondent herein was appointed as Sub-Staff with effect from 04-11-1981 and his services were confirmed in the said cadre with effect from

04-05-1982. The 2nd respondent, while working as Daftary at Tarnaka Branch, the Branch Manager requested the Zonal Office to transfer him to another branch, as there was surplus sub-staff in the above branch. Accordingly, by an order dated 18-08-1992, the 2nd respondent was transferred from Tarnaka branch to Zonal Office, Hyderabad. The 2nd respondent, while working at the Zonal Office, Hyderabad abstained from duties from 10-03-1993 onwards without sanction of leave from the authorities and without submitting application for leave. As there was no communication from the 2nd respondent for his unauthorized absence, the management in exercise of powers conferred under Clause 17 of the Bipartite Agreement dated 10-04-1989, issued a notice

dated 18-08-1993 the 2nd respondent directing him to report for duty within a period

of thirty days from the date of receipt of the said notice. The said notice was issued to the last known address of the 2nd respondent and the same was returned undelivered. Therefore, a press notification in "Eenadu" Telugu Daily was published on 17-11-1993, again, advising the 2nd respondent to report for duty within 30 days from the date of the said publication. Since the 2nd respondent did not turn up, the management by invoking Clause 17(A) of the Bipartite Agreement passed an order dated

05-01-1994, stating that he was deemed to have voluntarily retired from the service of the bank with effect from 17-12-1993. The management further treated the period of his unauthorized absence from 10-03-1993 as absence without pay and allowances. Though, the 2nd respondent filed W.P.No.16690 of 1994 before this Court challenging the order dated 05-01-1994, he had withdrawn the same and filed petition under Section 2-A(2) of the Industrial Disputes Act before the Labour Court.

A detailed counter affidavit has been filed by the petitioner-management before the Labour Court denying the allegations made by the 2nd respondent and asserted that since the 2nd respondent was absent for duty for more than 90 days and he did not respond even for the notice of 30 days, it was deemed that he retired voluntarily from the service of the bank by invoking Clause 17(A) of the Bipartite Agreement.

The Labour Court erroneously came to the conclusion that the workman had sent letters to the management from time to time seeking sanction of leave and the notice of 30 days asking the workman to come and join duty was not sent to the proper address of the workman and therefore, found that invoking clause 17(A) of the Bipartite Agreement is itself bad in law and therefore, the impugned order is arbitrary and illegal and directed the petitioner-management to reinstate the workman-2nd respondent into service with continuity of service, full back wages and attendant benefits. Aggrieved by the same, the present writ petition has been filed.

A detailed counter affidavit has been filed by the 2nd respondent before this Court, denying the allegations made by the petitioner-management and supporting the award passed by the Labour Court.

I have given my earnest consideration to the respective submissions made on either side and perused the award passed by the Labour Court as well as the other material available on record.

At the outset, I am of the view that the Labour Court has not committed any error in coming to the conclusion that the petitioner-management retiring the workman voluntarily from the service of the bank by invoking Clause 17(A) of the Bipartite Agreement as bad in law.

Before the Labour Court, on behalf of the workman, who is the 2nd respondent herein, examined himself as W.W.1 and documents Exs-W1 to W21 were marked. On behalf of the petitioner-management M.W.1 was examined and documents Exs-M1 to M11 were marked.

As per the material available on record, it is seen that out of Exs-W5 to W15, there are five leave applications leave submitted by the 2nd respondent from his Hyderabad address and remaining four letters were addressed by him to the bank from Guntur intimating the change of address to the bank. More particularly, in Ex-W11, dated 07-06-1993, the workman, while referring to his earlier four letters, has clearly mentioned in the last paragraph that for record and for communication purposes, he has given his Guntur Address as he is staying with his father-in-law at Guntur. All the said letters were sent under certificate of posting. Further, it was noticed that the 2nd respondent applied for leave up to 25-04-1994 and on the very next day i.e. 26-04-1994, he reported at Zonal Office and on 28-04-1994 at Central Office. This would show the anxiety of the 2nd respondent, which the petitioner-management could not dispute. In fact, it is the case of the bank that the 2nd respondent was absent from duties for 90 days from 10-03-1993 without intimation, without application for leave or without prior sanction of leave. But, the communication sent by the 2nd respondent (Ex-W5 to W15) would show that he has despatched the leave letters, time and again, and ultimately, he reported to duty on expiry of the last leave sought by him on 25-04-1994.

In view of the aforesaid discussion, it is clear that the bank deeming the voluntary retirement of the 2nd respondent as per Clause 17(A) of the Bipartite Agreement dated 10-04-1989 was not correct.

The Clause 17(A) of the Bipartite Agreement reads as under:

“When an employee absents himself from work for a period of 90 days or more consecutive days, without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave

sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment in India or when the management is reasonably satisfied that he has no intention of joining duties, the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice, stating *inter alia* the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's rights to take any action under the laws or rules of service."

Clause 17(A) of the Bipartite Agreement contemplates firstly, that absence should be more than a period of 90 days continuously without submitting any application for leave or for its extension or without any leave to his credit or beyond the period of leave sanctioned originally.

In view of the facts noticed above, none of these ingredients are satisfied to invoke Clause 17(A) of Bipartite Agreement. That apart, the petitioner sent the above said notice, which was returned unserved, to the 2nd respondent to his Hyderabad Address. In fact, even before that, the 2nd respondent intimated the petitioner-management that he has been staying at Guntur and furnished his Guntur address for communication. That was not taken into consideration by the petitioner-management. The petitioner-management published a paper notification in Eenadu daily

on 17-11-1993 asking the 2nd respondent to report for duty within 30 days, and the same was published in the Hyderabad edition. The said notification reveals that even the notice of 30 days was not properly sent to the address of the 2nd respondent at Guntur and it was published in a wrong address.

From all the above, it is understood that the circumstances does not require invoking Clause 17(A) of the Bipartite Agreement. Therefore, I am of the view that the Award passed by the Labour Court does not suffer from any illegality or

irregularity warranting interference of this Court under Article 226 of the Constitution of India.

However, I am of the view that if Clause 17(A) of Bipartite Agreement has no relevance, then the absence of the 2nd respondent may amount to misconduct and that the petitioner-management is at liberty to proceed with departmentally. But, since the matter relates to the year 1993 and in view of the fact that at the time of admission of the writ petition, the petitioner-management was directed to pay 1/4th of back wages and accordingly, they were deposited and withdrawn by the 2nd respondent, I feel it appropriate that instead of conducting a fresh enquiry, it is better to deny 75% of the back wages by modifying the Award passed by the Labour Court. The Award passed by the Labour Court is modified and it shall read as under:

“The 2nd respondent is entitled for reinstatement with continuity of service, other attendant benefits and 25% of back wages. However, the petitioner-management shall not proceed against the 2nd respondent for his absence for the relevant period.”

The writ petition is allowed to the extent indicated above. No costs.

22-07-2005

Mjl/*

That Rule Nisi has been made absolute as above.

Witness the Hon'ble sri Bilal Nizki the Acting Chief Justice on this the Friday, twenty second of July, two thousand and five.

To,

- 1 The Presiding Officer Labour Court-I, A.P Hyderabad.
- 2 2 CCs to the G.P. for Labour, High Court buildings, Hyderabad. (OUT)
3. 2 CD copies.
4. Copy to Sri G.Ravi Mohan, Advocate.

*Form-NIC-OGS/WP{**LOBIS**}*